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### **Submission to Australian Parliament Senate Select Committee on COVID-19**

1. We welcome this opportunity to contribute to the Senate Committee inquiry into the Australian government's response to the COVID-19 outbreak and pandemic.<sup>1</sup> It seems very early to begin making such an assessment. But we offer from our respective disciplines (**comparative law** and **narratology**) some preliminary observations as well as lines for future investigation that may assist Parliament and others contributing to this ongoing debate.
2. Our analysis builds partly on our recent joint contribution to USydney blogs (slightly adapted and reproduced below, for convenience).<sup>2</sup> One key message from that contribution is that this pandemic and its response has created a new narrative world, rather like a peculiar disaster movie, that prioritises only certain types of heroes and "expertise". Another key point is that different countries nonetheless have been able to respond well if they have and can mobilise citizens' trust in communities and (generally well-run) government.<sup>3</sup> A third lesson is that as Australia keeps trying now to move into a phase of socio-economic revitalisation, a new narrative will emerge and could be framed by political and other leaders.

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<sup>1</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/COVID-19](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/COVID-19)

<sup>2</sup> See <https://japaneselaw.sydney.edu.au/2020/05/covid-19-in-asia-and-beyond-we-are-story-characters-living-in-a-new-story-world/> and forthcoming via <https://sbi.sydney.edu.au/coronavirus>.

<sup>3</sup> As Prof Francis Fukuyama notes in a recent interview, the effectiveness of COVID-19 responses lie less in regime type, but rather whether citizens trust their leaders, and whether those leaders preside over a competent and effective state: <https://supchina.com/2020/05/01/francis-fukuyama-interview-covid-19/>



3. In addition, more broadly, basic methodology in **comparative law** highlights the importance of working out *what to compare and why*. This is not obvious even if we try to focus on health outcomes. For this parliamentary inquiry, one question is whether to focus on death rates (which are easier to measure and compare, and the ultimate concern) or infection rates (varying widely depending on national testing regimes, but still maybe useful for projecting rates of deaths and serious treatments). On either measure, Australia has been doing extremely well by global standards.
4. If focusing mainly on COVID-19 death rates in assessing a current or future response, however, another aspect is whether and how to count deaths that are *indirectly* caused by the virus even over the short- to medium-term. These could include deaths from deferred or delayed surgeries or treatments, a greater than usual number of suicides (prompted by extended isolation) and more fatal traffic accidents (found eg in some parts of Japan despite an overall drop, as travel restrictions emptied streets so cars were driven faster).<sup>4</sup> Even greater complications come from trying to assess long-term consequences for the health and related welfare systems, from lockdown measures that result inevitably in severe economic slowdowns, as the stress from long-term un(der)employment is known to be extensive but hard to measure. It is even more complex to compare such effects across countries, as they have very different baselines regarding unemployment and health/welfare systems.
5. Contemporary experts in comparative law are also very attuned to considering what is being compared in terms of *law*. It is usually not enough to just compare the “black-letter law” rules set out in primary or secondary legislation. (This is well illustrated by Australia’s public health orders restricting movement, which needed to be further “interpreted”, eg as to what constitutes permitted “exercise”, by health ministers and/or police commissioners.<sup>5</sup>) Nor is it even enough to consider case law interpreting legislation (for which anyway there has been hardly any in Australia relating to pandemic responses, unlike countries like France or Germany with

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<sup>4</sup> <https://mainichi.jp/english/articles/20200516/p2g/00m/0na/010000c>

<sup>5</sup> See generally our colleague A/Prof Andrew Edgar, <https://auspublaw.org/2020/03/law-making-in-a-crisis-commonwealth-and-nsw-coronavirus-regulations/>



constitutionally-protected civil liberties).<sup>6</sup> We also need to compare norms that are “law-like” in terms of origin (from or supported by the government) and impact. Our blog posting mentions Sweden and Japan as countries where social distancing and travel restrictions are being implemented effectively, even among growing death and infection rates respectively, largely without police-enforced criminal or administrative sanctions. A question for this inquiry is therefore what Australia’s more narrowly legalistic response says about how we operate and our values as a society.

6. Japan’s pandemic response, which mostly appeals to communitarian norms of self-restraint rather than having the government and police enforce strict legal rules (as in Australia, albeit with local differences), is reminiscent of John Haley’s argument that Japan even in modern times is governed quite effectively by *Authority Without Power* (OUP, 1991). Regarding limited “power”, through legal enforcement mechanisms, legal sociologist Takao Tanase’s *Community and the Law* (co-translated for Elgar, 2010) that Japan remains acutely aware that rigorously extending a “modern” legal system into socio-economic ordering can often be a double-edged sword – even as it has embarked on another wave of justice system reform this century.<sup>7</sup>
7. Relatedly, a final general lesson from comparative law methodology is to be aware of *who* we are comparing, ie which legal systems. The US is often an outlier, in its law and related socio-economic system,<sup>8</sup> so this Inquiry and later analyses should probably not focus much on that country. Australian jurists (and others) also often compare the UK, as the “mother country” still especially for basic legal principles, but we now borrow more instrumentally and widely, so should keep looking at other (continental) European as well as

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<sup>6</sup> Compare eg Dr Holger Hestermeyer, <http://constitutionnet.org/news/coronavirus-lockdown-measures-german-constitutional-court>; and [https://www.lepoint.fr/societe/coronavirus-le-conseil-d-etat-limite-le-pouvoir-des-maires-17-04-2020-2371882\\_23.php](https://www.lepoint.fr/societe/coronavirus-le-conseil-d-etat-limite-le-pouvoir-des-maires-17-04-2020-2371882_23.php).

<sup>7</sup> Nottage, Luke R., Translating Tanase: Challenging Paradigms of Japanese Law and Society (May 27, 2006). Victoria University of Wellington Law Review, Vol.39, No. 4, pp. 755-778, 2009; Sydney Law School Research Paper No. 07/17. Available at SSRN: <https://ssrn.com/abstract=921932>

<sup>8</sup> Eg in comparative studies by Nottage on consumer law (especially product liability law), corporate governance, and contract law (many freely available via [https://papers.ssrn.com/sol3/cf\\_dev/AbsByAuth.cfm?per\\_id=488525](https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=488525)) – all areas moreover that are now hit by the COVID-19 pandemic.



Asian countries. In particular, we can learn from the comparatively effective yet diverse pandemic responses adopted in East Asia, as mentioned in our joint blog posting below.

8. With these methodological principles in mind, one conclusion that emerges from a preliminary comparative analysis of the pandemic is the importance of “proportionality” and “subsidiarity” principles in regulatory responses (including in international law, such as investment treaties<sup>9</sup> – often examined recently in Australian parliamentary inquiries).<sup>10</sup> As in public and private health, it is risky to jump in quickly with stronger measures, especially where there are uncertainties; to minimise side-effects and unexpected consequences, it is usually better to begin with less intensive interventions. Even when we set a short-term public health goal (like COVID-19 infection or especially death rates), and re-set goals as evidence becomes available or circumstances evolve, the response should be *proportionate*. It should seek to minimise adverse longer-term health effects (eg physical or mental health problems or suicides from sustained social isolation) and other adverse socio-economic impact (including economic contraction impacting on funding for the health and related social welfare systems). To get the balance right often means devolving decision-making authority to lower levels in government, with better information about constraints and impacts: the *subsidiarity* principle, well-developed say within the EU.
9. Japan seems to have pursued quite a proportionate response, only increasing restraints after infections started to escalate in March, rather like Sweden (but the latter with a much higher death rates). Yet Japan shows less devolution, arguably due to quite a centralised polity, despite the important policy-making contributions by Tokyo and Osaka governors. As a federal system, Australia has displayed more subsidiarity. Prime Minister Morrison and the federal

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<sup>9</sup> See eg Nottage, Luke R., Rebalancing Investment Treaties and Investor-State Arbitration: Two Approaches (June 14, 2016). *Journal of World Investment and Trade*, Vol. 17, No. 6, pp. 1015-1040, 2016; Sydney Law School Research Paper No. 16/54. Available at SSRN: <https://ssrn.com/abstract=2795396>

<sup>10</sup> Nottage, Luke R. and Ubilava, Ana, Costs, Outcomes and Transparency in ISDS Arbitrations: Evidence for an Investment Treaty Parliamentary Inquiry (August 6, 2018). *International Arbitration Law Review*, Vol. 21, Issue 4, 2018; Sydney Law School Research Paper No. 18/46. Available at SSRN: <https://ssrn.com/abstract=3227401>



government did usefully innovate around the Constitution by creating a “national cabinet” including premiers or leaders of all states and territories, to help coordinate pandemic responses in light of public health and economic advice. But states and territories across this huge island continent have still differed in timing, scope and implementation of pandemic responses, linked to infection and death rates but also arguably politics (with more centre-left states intervening more, notably Victoria eg not allowing solo fishing as golf as permitted “exercise”). Responses also vary even at local council level (with eg some even in New South Wales closing off city beaches to surfers, even if not necessarily at risk of police closing them down for exceeding state-level restrictions on crowds).

10. By contrast, New Zealand, a much stricter lockdown was implemented nation-wide with no regional variation, aiming at “eradication” rather than “management” of the virus.<sup>11</sup> In hindsight so far, given similar health outcomes so far compared to Australia, the policy seems less proportionate given the necessarily much greater adverse socio-economic impact (even in a more agrarian economy). Perhaps the policy was influenced by the electoral cycle, with Prime Minister Ardern before the pandemic viewed as facing a close election in September this year<sup>12</sup> – leaders don’t want to go to the polls amidst escalating death rates. But the policy could be implemented nation-wide because New Zealand still probably has what former constitutional law professor (and later Prime Minister) Geoffrey Palmer criticised as “the fastest law in the West”.<sup>13</sup> New Zealand still has a unitary state with only one house of parliament and no constitutional bill of rights, and quickly enacted new lockdown legislation,<sup>14</sup> attracting some belated and muted criticism.<sup>15</sup>

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<sup>11</sup> On the pros and cons of the eradication vs management strategies, from an interdisciplinary academic perspective, see generally the recent Go8 Report at <https://go8.edu.au/research/roadmap-to-recovery>

<sup>12</sup> Gary Hawke, <https://www.eastasiaforum.org/2019/12/20/ardern-stardust-and-a-closer-than-you-would-think-2020-election/>

<sup>13</sup> *Unbridled Power* (1<sup>st</sup> ed 1979), later edition reviewed here: <http://www.nzlii.org/nz/journals/OtaLawRw/2005/10.html>

<sup>14</sup> <https://www.stuff.co.nz/national/health/coronavirus/120572466/coronavirus-virus-laws-rushed-through-in-last-parliament-before-lockdown>.

<sup>15</sup> <https://thespinoff.co.nz/covid-19/28-04-2020/the-legal-basis-for-the-lockdown-may-not-be-as-solid-as-weve-been-led-to-believe/>



11. Another conclusion from a preliminary comparative analysis is that countries and their residents often tend to display a curious nationalism regarding their respective pandemic responses. New Zealanders mostly still seem very happy with their government's measures. Perhaps this reflects a psychological defence mechanism to deal with a tough lockdown, or an undercurrent of historical deference to authority ("conservative reformism", as put in an analysis comparing Japan's "reformist conservatism" in legal education),<sup>16</sup> or a sense of nationhood premised on New Zealand leading the world (eg first to give votes to women, expanding the welfare state over the 20<sup>th</sup> century, then deregulating dramatically in the 1908s while going "nuclear-free"), or more risk aversion generally. Another factor is that New Zealanders may feel a bit threatened by bigger resource-rich Australia. On the last point, it would be interesting to see how say smaller countries with closely linked larger neighbours (like Korea and Japan, or Japan and China) perceive comparative responses. It would also be interesting to research how emigres perceive the pandemic responses in their new countries. Perhaps they are very *optimistic and supportive* because they want to subconsciously justify their immigration choice (Nottage, as a New Zealander who emigrated to Sydney two decades ago, may be an example), or instead very *critical* (perhaps linked to different disappointments in having moved country).
12. Another point that emerges from a preliminary comparative analysis is that wider narratives can differ even towards a global crisis with many commonalities. Trying with difficulty to discern Australia's narrative towards disasters during its summer of bushfires, Tom van Laer was struck that the British government typically deploys a narrative of "we can endure this" that was developed first doing the Blitz of London during World War II, and revived to deal with IRA and later terrorist attacks. The narrative in Australia seems much less definite and consistent, and perhaps this is because the country (let alone New Zealand) has fortunately had few natural and other disasters. The narrative response by Japan's leaders nowadays seems quite British, but is worth investigating further in comparison also with Asian

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<sup>16</sup> Nottage, Luke R., Reformist Conservatism and Failures of Imagination in Japanese Legal Education. *Asia-Pacific Law & Policy Journal*, Vol. 2, pp. 28-65, 2001. Available at SSRN: <https://ssrn.com/abstract=837045>



countries. We should also track how narratives are evolving as, at least in Australia and some countries, the COVID-19 pandemic shifts from being primarily a health crisis to being an economic crisis. The related narrative tension was highlighted quite early in Australia by Prime Minister Morrison talking about the pandemic being about both “lives and livelihoods”, but we should track how a new story-line develops compared to the countries, as suggested towards the end of our joint blog posting reproduced below.

13. In addition, drawing more directly on the disciplinary perspective of **narratology** (how people use stories to persuade each other), Parliament first would benefit from working more systematically and curatorially with academics in developing and supplying official narratives, props, sites and endorsements. Limiting the potential for contradictions, such collaborations increase the likelihood citizens will cope with returning from the pandemic in a similar way. Parliament too may creatively use the experience of the pandemic. For example, mementos can materialize the successful return from the pandemic to the everyday world, a transition of which to be proud.
14. Second, emotionally distress because of the pandemic experience means that there is a vital role for Parliament to play in intentional interventions designed to help citizens cope with distress step by step. It is one thing to assert that citizens can be convinced that distress is cathartic; research findings instead show transforming that distress into benefits turns out to be complex and complicated, and may require a professional approach. To clarify, a reference to theatre may be helpful. In professional productions, trained actors typically are the ones to build narrative worlds. In “method acting” they blend their primary, ordinary lives into the narrative worlds and let the narrative worlds embrace them. Meanwhile they self-consciously realize the adopted narrative world is important but nonetheless different from the “real” world, a realization which eases coping with distress. The ease of getting out of the narrative of our pandemic world therefore constitutes a skill that drama schools teaching method acting could train citizens to do too. Meanwhile, extraordinary experience providers at large can consider offering intentional interventions like consultations, courses, counselling, discussions, therapies or training.





15. Third, this Senate Committee inquiry speaks to impactful issues in experiential industries more broadly. For example, both COVID-19 and virtual reality involve narrative worlds, which may present a costly challenge. These parallels explain the rise in addiction to certain video games and particularly richer virtual reality (e.g., Zoom) to which citizens can return whenever they like, for as long or as short a time as desired. For them, these realities stand as continuous identity reaffirmation and renewal, which can occur in no other way. To stop is to diminish the self. By contrast, the pandemic world will not continue forever to place a mental or physical burden on citizens. They therefore must treat their recent extraordinary experience as a series of happenings that transported their self profoundly but temporarily. They then can process it with awareness and abandon. Resumption of disbelief in the everyday world lies close to the heart of such successful retainment of ordinary life. Citizens ought to analogise the pandemic reality as a temporary narrative world, and become (or be made) aware that their alternate reality can only contribute to transformation of the everyday world if they at least periodically withdraw and reflect. The government has many opportunities and resources to help their citizens in this endeavour.

Yours sincerely,

*Luke Nottage & Tom van Laer*





## **“COVID-19 in Australia, Asia and Beyond: We Are Story Characters Living in a New Story World”**

**Prof Luke Nottage** (Sydney Law School) and **A/Prof Tom van Laer** (Sydney Business School)

Originally at: <https://japaneselaw.sydney.edu.au/2020/05/covid-19-in-asia-and-beyond-we-are-story-characters-living-in-a-new-story-world/>

Contemporary societies worldwide, and across the Asia-Pacific, have joined another realm. We struggle to make sense of the pandemic, ranging from the decelerated experience that continuously working from home promises, through to the immersion into COVID-19 impacts via news and social media. Engaging with this new narrative world, and eventually emerging from it, creates an ongoing challenge, which neither health professionals, nor politicians, nor policymakers address in much depth. They place emphasis on “flattening the curve,” for viral infections and economic slowdown, rather than on the complexities of transportation, transformation, and trans-mutilation as depicted in narratology<sup>17</sup> (how humanity uses stories to understand the world), and as experienced by ordinary citizens.

An overlooked aspect of COVID-19 is the wider story told by this intense, gripping, yet temporary pandemic.<sup>18</sup> This extraordinary experience creates a new narrative world, in which citizens feel as if they have escaped into a different, distinctly encapsulated frame. Narrative worlds are coherent, representative situation models woven from the distinct physical and temporal settings, props, characters, and

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<sup>17</sup> van Laer, Tom, Jennifer Edson Escalas, Stephan Ludwig, and Ellis A. van den Hende (2019), "What Happens in Vegas Stays on Tripadvisor? A Theory and Technique to Understand Narrativity in Consumer Reviews," *Journal of Consumer Research*, 46 (2), 267–85.

doi:<https://doi.org/10.1093/jcr/ucy067>

<sup>18</sup> “for peripatetic (auto)didacticism is the *homo narrans*’s preferred mode of knowing” (italics in original): Joy, Annamma and John F. Sherry (2003), "Speaking of Art as Embodied Imagination: A Multisensory Approach to Understanding Aesthetic Experience," *Journal of Consumer Research*, 30 (2), 259-82. doi:<https://doi.org/10.1086/376802>



performances that make experiences stand out.<sup>19</sup> Examining a narrative world can help reveal important currents and issues in socio-economic and legal ordering, offering new insights for policymakers and researchers.

### 1. Learning from Our New Storyline

To illustrate, this pandemic makes us feel as if we are stuck in disaster movie, but with some interesting differences from the usual Hollywood<sup>20</sup> (or Bollywood<sup>21</sup>) narratives. Thinking first of the heros, the main ones are those combatting the invidious coronavirus pandemic: the health professionals, especially the government medical officers, the front-line doctors and nurses, but (curiously) not really the psychologists or pharmacists.

The other unexpected heroes are those that usually do not feature: the supermarket staff on checkouts or (even more invisibly) stacking shelves, the truck drivers, or those making or delivering takeaways.

A few politicians are heroes too (or villains), but in a much reduced cast. Only few leaders of governments are prominent. Opposition leaders struggle to remain relevant. Not to mention the hundreds of other parliamentarians that usually vie for and get some media attention.

Everyone else is like an extra: paid a little to do not very much over long periods! These multitudes merely provide a the backdrop for the heroes to develop the movie's storyline.

Largely missing are other groups that sometimes feature in disaster movies, or indeed disaster management scenarios in real life. Belatedly, in Act II, the economists are surfacing more, as the health challenges from Act I become better known and outcomes are generally improving. Economists, including central bankers<sup>22</sup> who

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<sup>19</sup> Gerrig, Richard J. (1993), *Experiencing Narrative Worlds: On the Psychological Activities of Reading*, New Haven, CT: Yale. doi:<https://yalebooks.yale.edu/book/9780300054347/experiencing-narrative-worlds>

<sup>20</sup> E.g. Contagion (2011), <https://www.imdb.com/title/tt1598778/>

<sup>21</sup> E.g. Bhopal Express (1999), <https://www.imdb.com/title/tt0281656/>

<sup>22</sup> <https://www.eastasiaforum.org/2020/05/03/central-bankers-open-up-the-pandemic-box/>



usually take a low profile,<sup>23</sup> need to work out how to maintain or revive economies amidst ongoing uncertainties over a cure or vaccine.

The jurists remain largely missing in action, despite the introduction of “executive rule” (with many parliaments suspended)<sup>24</sup> and limited access to courts (as traditional bastions for civil liberties). But data privacy lawyers have sometimes made an appearance, eg on safeguards for the new COVIDSafe tracing App being encouraged by the Australian government for contact tracing).<sup>25</sup>

We also rather rarely hear of the sociologists, philosophers, theologians and even political scientists, who usually help us to make broader sense of the societies we live in. Nor do we hear much from academics more generally, unless working with those developing vaccines or specialising in public health.<sup>26</sup> However, for example, some Australian universities are now trying to highlight their wider interdisciplinary expertise,<sup>27</sup> as the sector takes a large hit in revenue due to declines especially in foreign student enrolments.<sup>28</sup>

So the scenario we are living through and see unfolding around us offers an opportunity to test whether there is a reversal of “the death of expertise”. Tom Nichols reviewed that phenomenon in 2017, although focusing more on postmodern Western rather than Asian societies.<sup>29</sup> Seeing ourselves in a disaster movie, in this way, can also provide insights into which groups of experts figure more prominently in public policy making generally.

## 2. Other Insights from and for Japan and Other Asian Societies

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<sup>23</sup> Prof Annelise Riles, <https://einaudi.cornell.edu/annelise-riles-secret-life-central-bankers>

<sup>24</sup> E.g. my colleague A/Prof Andrew Edgar: <https://auspublaw.org/2020/03/law-making-in-a-crisis-commonwealth-and-nsw-coronavirus-regulations/>

<sup>25</sup> <https://www.sydney.edu.au/news-opinion/news/2020/04/28/experts-examine-the-covid-19-tracing-app.html>

<sup>26</sup> As somewhat of an exception, as a blog funded by Australian universities, see <https://theconversation.com/au/topics/coronavirus-5830>.

<sup>27</sup> <https://go8.edu.au/research/roadmap-to-recovery>

<sup>28</sup> <https://www.abc.net.au/news/2019-08-21/australian-universities-too-dependent-on-chinese-students-report/11427272>

<sup>29</sup> <https://global.oup.com/academic/product/the-death-of-expertise-9780190469412?cc=au&lang=en&>



The COVID-19 pandemic also highlights the resilience or perhaps revival of community norms in contemporary societies, even in highly developed Asia-Pacific economies. We often observe the importance of such norms from disaster management studies.<sup>30</sup>

In particular, in the short-term *relief* phase, examples of cooperative and altruistic behaviour tend to far outweigh selfishness or illegal behaviour (such as looting), contrary to the fears of Thucydides during the Athenian plague of 430BC.<sup>31</sup> This often extends to the post-disaster *reconstruction* phase, although politics and business as usual can then resurface, and effectiveness depends significantly on measures of “social capital” (such as participation in neighbourhood associations or religious groups) that vary across states and even localities. The impact of such community norms and institutions can also make a big difference in the disaster-*planning* phase.<sup>32</sup> Rural Taiwan’s effective cooperation against Covid-19<sup>33</sup> provides an interesting recent example for further comparative studies.

Japan’s response is also fascinating. It maintained economic activity longer than many Asian countries, although so for example did Taiwan and Korea.<sup>34</sup> Japan’s original policy stance has been criticised by some commentators, especially perhaps those sceptical about an earlier administration’s management of the 2011 earthquake/tsunami/radiation disasters. Yet Japan’s (still) low per capita death rate,<sup>35</sup> as well as another strong recent electoral result for the Abe Administration in 2019,<sup>36</sup>

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<sup>30</sup> Nottage, Luke R. and Nasu, Hitoshi and Butt, Simon, Disaster Management: Socio-Legal and Asia-Pacific Perspectives (May 12, 2013). ASIA-PACIFIC DISASTER MANAGEMENT: COMPARATIVE AND SOCIO-LEGAL PERSPECTIVES, Simon Butt, Hitoshi Nasu and Luke Nottage, eds., Springer, pp. 1-58, 2014; Sydney Law School Research Paper No. 13/36. Available at SSRN: <https://ssrn.com/abstract=2263953>

<sup>31</sup> Frank Furedi, [Coronavirus: Pandemics remind us of the power of community](#)

[[=“Adversity Begets Brave New World” in print version] *The Australian* (2-3 May 2020)

<sup>32</sup> Daniel Aldrich, <https://press.uchicago.edu/ucp/books/book/chicago/B/bo13601684.html>

<sup>33</sup> <https://www.eastasiaforum.org/2020/04/30/rural-taiwans-community-cooperation-against-covid-19/>

<sup>34</sup> <https://www.economist.com/asia/2020/03/30/south-korea-keeps-covid-19-at-bay-without-a-total-lockdown>

<sup>35</sup> <https://asiatimes.com/2020/04/why-japan-gets-no-covid-19-respect/>

<sup>36</sup> <https://www.eastasiaforum.org/2019/07/25/abe-and-the-ldp-remain-dominant-after-japans-upper-house-elections/>



could explain this original policy stance. Nonetheless, as infections and testing grew,<sup>37</sup> the government declared a state of emergency last month — recently extended<sup>38</sup> — and “encouraged” dramatic reductions of sales and movements.<sup>39</sup>

Unusually, the central and local governments did not set criminal sanctions and use the police to enforce the restrictions. Instead they relied on appeals to narratives of civic virtue and consideration for others, albeit underpinned by the more instrumentalist power (and eventually practice) of “shaming” some miscreant businesses by “warning” the public if they remained open.<sup>40</sup>

An official reason for not mobilising the police was this would violate civil liberties enshrined in Japan’s (post-War, US-inspired) Constitution. Yet that, like other constitutions around the world, have provisions arguably justifying tougher interventions and sanctions.<sup>41</sup> One more likely explanation is that such measures, especially if introduced by a centre-right government, would remind its citizens (and neighbouring countries) of Japan’s militarist past – countering persistent efforts to substitute a narrative of “modern” freedoms and even pacifism.<sup>42</sup>

Another explanation is that Japanese leaders and policy-makers are aware that communitarian norms and respect for authority (and experts) remain comparatively strong. An analogy in Sweden, where leaders and policymakers still rely on community rather than legal norms despite a much higher death rate.<sup>43</sup>

Japan’s evolving experiment therefore raises another longstanding question: the importance of law in contemporary socio-economic ordering. Commentators have

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<sup>37</sup> <https://www.eastasiaforum.org/2020/04/28/japans-timid-covid-19-response/>

<sup>38</sup> <https://www.theguardian.com/world/2020/may/04/japan-to-extend-state-of-emergency-covid-19-amid-fears-second-wave-could-cripple-tokyo-hospitals>

<sup>39</sup> <https://www.japantimes.co.jp/news/2020/05/03/national/japan-partially-relax-interpersonal-contact/#.Xq9dzpolGUY>

<sup>40</sup> <https://time.com/5813619/japan-coronavirus-lockdown/>

<sup>41</sup> [https://www.japantimes.co.jp/opinion/2020/04/14/commentary/japan-commentary/coronavirus-japans-constitution/#.Xq9e\\_ZolGUY](https://www.japantimes.co.jp/opinion/2020/04/14/commentary/japan-commentary/coronavirus-japans-constitution/#.Xq9e_ZolGUY)

<sup>42</sup> See generally Gustafsson et al (2019) <https://www.tandfonline.com.ezproxy1.library.usyd.edu.au/doi/full/10.1080/09557571.2019.1623174>

<sup>43</sup> <https://www.theguardian.com/world/commentisfree/2020/apr/21/sweden-covid-19-policy-trust-citizens-state>



persuasively criticised an earlier “cultural relativist” theory that low civil litigation rates or less reliance on detailed contracts can simply be explained by “pre-modern” consensus-oriented or Confucian norms. Instead, they identified cost-benefit motivations for elites or individuals behind such outcomes.<sup>44</sup> Building on both storylines, the government itself has tried to promote a more active use of the legal system since the economic slowdown from the 1990s, including through wide-ranging justice system reforms.

Yet Japan seems to have reached a new equilibrium,<sup>45</sup> allowing an enhanced role for law while being cautious of its over-reach and conscious of the usefulness of maintaining strong communitarian values.<sup>46</sup> This balance, or tension, arguably becomes more visible in disaster situations in Japan, as also during the 2011 earthquake/tsunami/radiation disasters. It is therefore a topic worth comparing now across other Asian countries.

### 3. Emerging from the Pandemic into Another Narrative World

Over the course of the pandemic narrative world’s end, it will transcend its extraordinary nature. Sociologists and historians remind us that many tangible improvements come out of disasters.<sup>47</sup> Yet the narrative world that originates in the pandemic will also feed or “bleed” into the everyday world.<sup>48</sup> Citizens can either transform this bleed into benefits that enrich their lives, or “trans-mutilate” it so that their lives remain immune. Reflecting on the discourses that surround the COVID-19 pandemic, we observe that many people “seek bleed out”. They want triggers, they want change, and they want transformation.

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<sup>44</sup> Abe and Nottage (2006 1<sup>st</sup> ed) <http://www.austlii.edu.au/au/journals/ELECD/2006/184.html>

<sup>45</sup> Wolff, Leon and Nottage, Luke R. and Anderson, Kent, Introduction: Who Rules Japan? (February 19, 2015). WHO RULES JAPAN? POPULAR PARTICIPATION IN THE JAPANESE LEGAL PROCESS, L. Wolff, L. Nottage and K. Anderson, eds, Edward Elgar, UK & USA, 2015; Sydney Law School Research Paper No. 15/10. Available at SSRN: <https://ssrn.com/abstract=2567552>

<sup>46</sup> Nottage, Luke R., Translating Tanase: Challenging Paradigms of Japanese Law and Society (May 27, 2006). Victoria University of Wellington Law Review, Vol.39, No. 4, pp. 755-778, 2009; Sydney Law School Research Paper No. 07/17. Available at SSRN: <https://ssrn.com/abstract=921932>

<sup>47</sup> Furedi 2020, op cit.

<sup>48</sup> Orazi, Davide and van Laer, Tom, There and Back Again: Bleed from Narrative Worlds (May 1, 2020). Available at SSRN: <https://ssrn.com/abstract=3347452> or <http://dx.doi.org/10.2139/ssrn.3347452>.



Deconstruction of the pandemic's narrative world can have a pronounced transformative effect on these people. After the COVID-19 pandemic is over, many citizens will reveal how their behaviour, feelings, and thoughts in the narrative world are leaving traces with them afterwards, because of the world's absence. By keeping the portal wedged open, traces of the narrative world's presence will remain with these COVID-19-survivors and spread discernibly into the wider everyday world. Coping with these traces will offer purgative relief from these distressing emotions.

COVID-19 will change us. It will force us to face personal demons; to ask ourselves essential questions about the nature of humanity, of love, of choice. It will teach us new things about hope, and about loss. We will feel like we leave parts of ourselves stumbling around in that disaster movie. In return, we will bring back home a new piece of our humanity, of our innocence. We will thus become more aware of other worldviews through the extraordinary experience of the COVID-19 pandemic. Because of its absence, people will become more conscious of conspicuous consumption, of new relationships and sides to our identities.

However, challenged to negotiate the portal threshold between the narrative and the everyday world, not all citizens will gratefully receive these valuable aids to narratively sourced enculturation and instruction. Some COVID-19-survivors will not use narrative-provided meanings to further their worldviews and identity projects, and suit new consumption purposes and relationship statuses. Various survivors will fence off the narrative world of the pandemic, close the portal, and as such engage in strategies that trans-mutilate the narrative benefits passed onto them. The emotional distress they suffer will be cathartically powerless.

We wonder whether leaving our current novel narrative world will help consumers eventually. Will citizens suffer more after this episode, because they have experienced the benefits, yet are unable to escape their daily lives? We answer that citizens will suffer more soon after this narrative world has ended—but less eventually—if they analyse and take away the narrative benefits so as to transform the daily lives they can never escape.